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July 22, 2018

VIA ELECTRONIC FILING

The Honorable Leonard P. Stark
United States District Court
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801

REDACTED PUBLIC VERSION

Re: *International Business Machines Corporation v. Groupon, Inc.*,
C.A. No. 16-122-LPS-CJB

Dear Chief Judge Stark:

Pursuant to the Pretrial Order in this case (*see* D.I. 305 at 9-10), the parties hereby submit the attached deposition designations expected to be presented at trial on Monday, July 23 (Day 6). The parties present the following objections to the Court:

1. Arun Iyengar (09/15/2017 Deposition) (transcript attached as Exhibit 1)

Testimony	IBM's Objections	Groupon's Basis/Response
040:07-040:11 040:14-042:10	The designated testimony, particularly 40:7-11, 40:14-24, and 41:17-42:10, appears to be offered only to tarnish the witness's character based on his attempts to understand the question rather than any substantive response, and any minimal relevance is substantially outweighed by prejudice. FRE 402, 403.	Dr. Iyengar is the sole inventor of the '601 patent and IBM's corporate designee on the '601 patent technical topics. The disputed testimony relates to his answers regarding how his purported invention works, which is indisputably relevant to the substance of this case. <i>See</i> 40:7-11 ("How does your invention preserve the state?"); 41:8-11 ("Tell me a way in which the patent works in which the user actually sees a link of the form 9a on a returned web page."). Further, excluding this testimony is prejudicial to Groupon, particularly in light of the fact that IBM has not made Dr. Iyengar available as a live witness. IBM also provided counter-designations

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		to the disputed testimony, which Groupon has agreed to.
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2. Arun Iyengar (10/10/2016 Deposition from the *IBM v. Priceline* case) (transcript attached as Exhibit 2)

Testimony	Groupon's Objections	IBM's Basis/Response
031:14-031:15 031:18-032:14	Improper use of depositions under FRCP 32; HSY – IBM seeks to use Dr. Iyengar's testimony from the <i>IBM v. Priceline</i> case to counter-designate against testimony from the present case. Such use of deposition testimony is not permitted under FRCP 32 because Groupon was not "present or represented at the taking of the deposition" and did not "ha[ve] reasonable notice of it." FRCP 32(a)(1)(A). It is also inadmissible hearsay. FRE 802; FRCP 32(a)(1)(B). Groupon has not designated any testimony from the <i>IBM v. Priceline</i> case.	This testimony from the <i>Priceline</i> case relates to the same subject matter (IBM's use of the '601 patent) as Groupon's initial designation and ought to be considered in fairness under FRE 106; the testimony is thus not subject to exclusion as hearsay. FRE 802.

Respectfully,

/s/ John G. Day

John G. Day (#2403)

JGD: nml
 Attachments

Cc: All Counsel of Records (via electronic mail; w/attachments)